IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE THE CHIEF JUSTICE MR.V.K.BALI
&
THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

THURSDAY, THE 14TH DECEMBER 2006 / 23RD AGRAHAYANA 1928

W.P.(C).No.31125 of 2006(S)

PETITIONER:-

MANIMALAYAR SAMRAKSHANA SAMITHI,
KULATHUR P.O., PATHANAMTHITTA, REPRESENTED BY
ITS SECRETARY, GOPINATHA PILLAI, AGED 58 YEARS,
S/O. NARAYANA PILLAI, VALIYATHOTTATHIL,
KOTTANGAL, PATHANAMTHITTA.

BY ADV. SRI.T.M.ABDUL LATHEEF

RESPONDENTS:-

1. STATE OF KERALA,
   REPRESENTED BY THE CHIEF SECRETARY TO GOVERNMENT,
   SECRETARIAT, THIRUVANANTHAPURAM.

2. DISTRICT COLLECTOR, KOTTAYAM.

3. DISTRICT COLLECTOR, PATHANAMTHITTA.

4. DISTRICT SUPERINTENDENT OF POLICE, KOTTAYAM.

5. DISTRICT SUPERINTENDENT OF POLICE, PATHANAMTHITTA.

6. THE CIRCLE INSPECTOR OF POLICE, MANIMALA.

BY GOVERNMENT PLEADER SRI.T.B.HOOD.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 11/12/2006, THE COURT ON 14/12/2006 DELIVERED THE FOLLOWING:-

V.K.Bali,C.J. & C.N.Ramachandran Nair,J.

W.P.(C).No.31125 of 2006-S

Dated, this the 14th day of December, 2006

JUDGMENT

V.K.Bali,C.J.

In a writ seeking stoppage of indiscriminate and illegal mining of river sand in Manimala River, this Court passed orders in W.P.(C).Nos.35350 of 2005 and 1281 of 2006 on 1st March, 2006. The operative part of the order read thus:

> "A statement was filed on behalf of 5th and 7th respondents stating that police is vigilant and strict action is taken against the persons who are conducting illegal sand mining. The learned government Pleader submitted that a legislation was passed and sand mining is given by auction for the kadavus fixed by the District Collector. When pointed out the present conditions of the rivers in Kerala especially Manimala, Pamba etc., and the newspaper reports and photographs, it is submitted that despite strict vigilance, illegal sand mining is carried on by the sand mining lobby and it is the reason for the present condition of the rivers. The River Management Committees are not functioning properly in spite of the legislation passed and the expert committee is not continuously monitoring the effects of the mining of sand from the rivers. Before conducting auction in each year, expert committee is not meeting or visiting the place. This is a sorry

state of affairs. Government should see that collection of sand within one kilometre from any of the bridges or any of the irrigation projects in the rivers of Kerala is prohibited as mentioned in Ext.P5 judgment of the Division Bench. Before auctioning the sand mining, report from the expert committee as referred to in paragraph 11 (iii) of the judgment should be obtained and without obtaining a favourable report, no steps for auctioning sand mining should be done".

2. The same petitioner, who sought direction as mentioned above, has filed this fresh petition with the following prayers:

"(i) To call for the records relating to Exts.P-1 to P-6 and to issue a writ of mandamus, order or direction directing the Respondents especially the first respondent to set up special forces to deal with illegal sand mining and also to enact provisions to fill up the omissions in the Protection of River Banks and Regulation of Removal of Sand Rule regarding initiation of criminal proceedings against the offenders, confiscation of vehicle, filing of complaint, preparation of sand audit report including to declare that Rule 30 regarding sand audit is contrary to the provisions of the Act and hence to declare the same as illegal and to direct the Government to set proper agency for conducting study report about availability of sand and placing the same before the State Legislative Assembly within a period of six months instead of 3 years and also to

incorporate such other provisions to curtail and prohibit illegal and unauthorised sand mining and also by making the illegal sand mining as a severe offence attracting deterrent punishment.

(ii). To issue a writ of mandamus commanding the District Collector, Pathanamthitta and District Collector, Kottayam and the respective District Police Superintendents to effectively monitor the Police and Revenue Official employed for detection of illegal sand mining, transportation, etc. and to effectively prevent the illegal sand mining through unauthorised means by taking into custody lorries and to confiscate the same and also to arrest all the offenders including persons indulging in the activity of illegal sand mining.

(iii) To declare that the decision in Pookoya vs. State of Kerala, reported in 2005(3) KLT 220 did not lay down the correct law and the said decision defeats the purpose and object of legislation and this Honourable Court may issue direction by taking public interest to confiscate all vehicles involved in illegal sand transportation.

(iv) Any other appropriate writ, order or direction also may be granted to meet out justice under the circumstances of the above case".

3. Necessary directions have already been issued, but the primary complaint now is that despite the directions, illegal

mining is going on in abundance and even though District Collector has taken some active steps, the same has not culminated into the desired results. In the wake of directions earlier given and also of the averments made in the present petition, we direct the district administration including the police to prevent illegal sand mining by making public awareness and also to check illegal sand mining by keeping a constant vigil.

The writ petition is disposed of as indicated above.

A copy of this order be communicated to the District Collectors and Superintendents of Police of Kottayam and Pathanamthitta.

V.K.Bali
Chief Justice

C.N.Ramachandran Nair
Judge

vku/-